

Todd M. Friedman (216752)
Law Offices of Todd M. Friedman, P.C.
369 S. Doheny Dr. #415
Beverly Hills, CA 90211
Phone: 877 206-4741
Fax: 866 633-0228
tfriedman@attorneysforconsumers.com
Attorney for Plaintiff

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHMS
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES MCKAIN,

Plaintiff,

vs.

AARGON COLLECTION
AGENCY,

Defendant.

Case No. **C 10-00340**

MEJ

) COMPLAINT FOR VIOLATION
) OF FEDERAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) ROSENTHAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) AND INVASION OF PRIVACY
)
)

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices. Ancillary to the claims above, Plaintiff further alleges claims for

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.

3 4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).

6 7 **III. PARTIES**

8 3. Plaintiff, CHARLES MCKAIN ("Plaintiff"), is a natural person
9 residing in Santa Clara county in the state of California, and is a "consumer" as
10 defined by the FDCPA, 15 U.S.C. § 1692a(3) and is a "debtor" as defined by Cal
11 Civ Code 1788.2(h).

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14 4. At all relevant times herein, Defendant, AARGON COLLECTION
15 AGENCY, ("Defendant") was a company engaged, by use of the mails and
16 telephone, in the business of collecting a debt from Plaintiff which qualifies as a
17 "debt," as defined by 15 U.S.C. § 1692a(5), and a "consumer debt," as defined by
18 Cal Civ Code § 1788.2(f). Defendant regularly attempts to collect debts alleged
19 to be due another, and therefore is a "debt collector" as defined by the FDCPA,
20 15 U.S.C. § 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).

21 22 23 **IV. FACTUAL ALLEGATIONS**

24
25 5. At various and multiple times prior to the filing of the instant
26 complaint, including within the one year preceding the filing of this complaint,
27 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
28

1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:

- 3 a. Causing a telephone to ring repeatedly or continuously to
4 annoy Plaintiff (Cal Civ Code § 1788.11(d));
- 5
6 b. Communicating, by telephone or in person, with Plaintiff
7 with such frequency as to be unreasonable and to constitute
8 an harassment to Plaintiff under the circumstances (Cal Civ
9 Code § 1788.11(e));
- 10
11 c. Causing Plaintiffs telephone to ring repeatedly or
12 continuously with intent to harass, annoy or abuse Plaintiff
13 (§ 1692d(5)); and
- 14
15 d. Communicating with Plaintiff at times or places which
16 were known or should have been known to be inconvenient
17 for Plaintiff, (§ 1692c(a)(1).

18 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
19 also constitute an intentional intrusion into Plaintiff's private places and into
20 private matters of Plaintiff's life, conducted in a manner highly offensive to a
21 reasonable person. Plaintiff had a subjective expectation of privacy that was
22 objectively reasonable under the circumstances.

23
24 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's
25 debt to third parties constitutes a public disclosure of a private fact not of
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1 legitimate public concern. Defendant's disclosures were highly offensive to a
2 reasonable person.
3

4 8. As a result of the above violations of the FDCPA, RFDCPA and
5 invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's
6 feelings, personal humiliation, embarrassment, mental anguish and emotional
7 distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages,
8 statutory damages, and costs and attorney's fees.
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11 **COUNT I: VIOLATION OF FAIR DEBT**
12 **COLLECTION PRACTICES ACT**

13 9. Plaintiff reincorporates by reference all of the preceding paragraphs.
14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays that judgment be entered
17 against the Defendant for the following:
18

- 19 A. Declaratory judgment that Defendant's conduct
- 20 violated the FDCPA;
- 21 B. Actual damages;
- 22 C. Statutory damages;
- 23 D. Costs and reasonable attorney's fees; and,
- 24 E. For such other and further relief as may be just and proper.
25

26 **COUNT II: VIOLATION OF ROSENTHAL**
27 **FAIR DEBT COLLECTION PRACTICES ACT**

28 10. Plaintiff reincorporates by reference all of the preceding paragraphs.

11. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the RFDCPA;
- B. Actual damages;
- C. Statutory damages for willful and negligent violations;
- D. Costs and reasonable attorney's fees,
- E. For such other and further relief as may be just and proper.

COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS

12. Plaintiff reincorporates by reference all of the preceding paragraphs.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this 15th day of January, 2010.

1 By: 
2 **TODD M. FRIEDMAN (216752)**
3 **LAW OFFICES OF TODD M.**
4 **FRIEDMAN, P.C.**
5 **369 S. Doheny Dr. #415**
6 **Beverly Hills, CA 90211**
7 **Phone: 877 206-4741**
8 **Fax: 866 623-0228**
9 **tfriedman@attorneysforconsumers.com**
10 **Attorney for Plaintiff**
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